

BEFORE THE FISH AND WILDLIFE COMMISSION  
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I, II, III, IV, and V pertaining to	)	PROPOSED ADOPTION
the unauthorized placement of fish	)	
into public waters	)	

TO: All Concerned Persons

1. On February 24, 2014 at 7:00 p.m., the Fish and Wildlife Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed adoption of the above-stated rules.

On February 25, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed adoption of the above-stated rules.

On March 3, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Headquarters Office, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

On March 3, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed adoption of the above-stated rules.

On March 4, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed adoption of the above-stated rules.

On March 4, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 6 Office, 54078 US Highway 2 West, Glasgow, Montana, to consider the proposed adoption of the above-stated rules.

On March 11, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed adoption of the above-stated rules.

On March 11, 2014 at 7:00 p.m., the commission and the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed adoption of the above-stated rules.

2. The commission and the department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

3. The rules as proposed to be adopted provide as follows:

NEW RULE I GENERAL PURPOSE (1) As determined by the department, these rules pertain to the department's response to the placement of live fish into public waters without authorization by the department whether the cause of the placement is known or unknown. These rules are intended to cover all placement of unauthorized species into the public waters, including from outside or inside the state through introduction or transplantation. Unauthorized species include any live fish placed into public waters without authorization.

(2) The unauthorized placement of fish into public waters is of significant concern and is likely to have many adverse impacts, including but not limited to:

- (a) adverse impacts on native, wild and stocked fish populations;
- (b) potential to spread disease;
- (c) degradation of water quality;
- (d) degradation of aquatic habitat;
- (e) increased fishery management costs;
- (f) loss of angling opportunities and quality; and
- (g) harm to local and regional tourism economies.

(3) The department and commission shall make prevention of and response to unauthorized species a priority.

(4) During efforts to respond to the placement of unauthorized species, the department will endeavor to protect the previously existing fishery and suppress or eradicate the unauthorized species to maintain the existing management objectives for that fishery.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE II DEPARTMENT'S INITIAL RESPONSE AND ACTION PLAN

(1) The department shall begin an initial investigation within 30 days after the report of the presence of an unauthorized species in an attempt to confirm that an unauthorized placement has occurred and to estimate the distribution, abundance, age structure, and potential population expansion of the unauthorized species.

(2) The department shall prepare an action plan for responding to an unauthorized species. The action plan will identify the department's immediate and long-term management objectives for the unauthorized species and the management actions that may be implemented to achieve those objectives. The management objectives shall be based on a risk and feasibility assessment, with consideration for the following:

- (a) the risk that the unauthorized species could expand into connected or nearby waters;
- (b) the current distribution of the unauthorized species and the proximity of those populations to the new placement;
- (c) the probability that the unauthorized species will survive and propagate;
- (d) the impact that the unauthorized species might have on the existing fishery, especially threatened or endangered species, native species, game species, and important forage species;
- (e) the immediate and long-term impacts that the unauthorized species might have on previously existing angling opportunities; and
- (f) the immediate and long-term economic impacts that the unauthorized species might have on the department, the public, and the economy.

(3) To protect existing fisheries, local economies, wildlife enjoyment, and angler opportunities, the department shall attempt eradication or suppression of the unauthorized species.

(4) The department shall attempt to identify and cite any individuals responsible for the unauthorized placement and seek penalties and restitution pursuant to the penalties and fines outlined in law.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE III MANAGEMENT ACTIONS (1) The department's action plan for responding to a confirmed unauthorized species placement may include, as determined by the department, the following management actions for eradication or suppression:

- (a) prohibit or discontinue stocking the water body if the presence of the unauthorized species reduces the effectiveness of the stocking effort;
- (b) prohibit or discontinue stocking of any forage fish species that benefits the unauthorized species;
- (c) modify angling regulations for the immediate and connected water bodies with unauthorized species including:
  - (i) liberalizing or removing daily angling limits;
  - (ii) enacting catch-and-release fishing;
  - (iii) extending or removing the angling season;
  - (iv) allowing capture methods other than hook and line;
  - (v) instituting mandatory catch-and-kill regulations; or
  - (vi) closing the water to all fishing.
- (d) deny applications for fishing contests that target the unauthorized species, except in cases where the department determines the contest is an essential tool for suppression or eradication and requires that the contest has catch-

and-kill rules;

(e) authorize commercial harvest or economic harvest incentives for the unauthorized species if statutory authority is provided and is prescribed by a management plan;

(f) implement physical control measures to reduce the population of unauthorized species, including:

(i) installation of fish barriers;

(ii) removal using chemical or mechanical methods;

(iii) netting spawning fish;

(iv) habitat manipulation (e.g., reservoir drawdown);

(v) removing illegal species when encountered incidental to other management or survey activities; or

(vi) disturbing spawning areas to reduce survival.

(g) implement angler harvest incentive programs.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE IV ADAPTIVE MANAGEMENT APPROACH FOR UNAUTHORIZED SPECIES (1) The department may amend its management objectives for a body of water if after a reasonable period of time the department concludes that:

(a) the management actions have succeeded and the department has accomplished the management objectives and that continued implementation of the existing action plan is no longer necessary; or

(b) the management actions have failed to accomplish the management objectives, and that continued implementation of the existing action plan is unlikely to accomplish the desired outcome.

(2) Revisions to the management objectives may prescribe management actions that are more tolerant or less tolerant of the presence of the unauthorized species and must include a rationale for any changes. The department shall report any revisions to the management objectives to the commission.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

NEW RULE V REPORTING REQUIREMENTS (1) The department shall maintain an electronic repository utilizing a standardized format to document the initial investigation and subsequent management actions taken in response to each unauthorized species.

(2) Documentation must include, but is not limited to:

(a) results of the department's initial investigation to confirm the presence of the unauthorized species and information collected on the distribution, abundance, age structure, and potential population expansion of the unauthorized species;

(b) the action plan for responding to the unauthorized species, including the management objectives and potential management actions;

(c) a summary of management actions taken to respond to the unauthorized

species; and

(d) changes to any action plan taken under the adaptive management approach.

(3) The electronic repository shall be updated on an annual basis to include all new unauthorized species and changes to documentation regarding previously reported unauthorized species.

AUTH: 87-5-704, MCA

IMP: 87-5-701, 87-5-704, 87-5-713, 87-5-715, MCA

Reasonable Necessity: The department and the commission propose new rules that outline how the department will respond to the placement of fish into the public waters of Montana without authorization from the department. The new rules will address the placement of unauthorized species into a water body as a significant concern and could potentially have many adverse impacts on existing fish species, aquatic habitat, angling opportunities, and the economy.

4. Concerned persons may present their data, views, or arguments either orally or in writing, at any one of the hearings. Written data, views, or arguments may also be submitted to Fish, Wildlife and Parks, Fisheries Division, PO Box 200701, Helena, MT, 59620-0701; fax 406-444-4952; e-mail fwpfsh@mt.gov, and must be received no later than March 21, 2014.

5. Don Skaar or another hearing officer appointed by the department has been designated to preside over and conduct these hearings.

6. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notices and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1712 9th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ M. Jeff Hagener

Jeff Hagener

Director

Department of Fish, Wildlife and Parks

/s/ Rebecca Dockter

Rebecca Dockter

Rule Reviewer

/s/ Dan Vermillion

Dan Vermillion

Commission Chairman

Fish and Wildlife Commission

Certified to the Secretary of State January 21, 2014